

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
ANDRE M. DAVIS
UNITED STATES DISTRICT JUDGE

U.S. COURTHOUSE
101 W. LOMBARD STREET
BALTIMORE, MARYLAND 21201
(410) 962-0801
FAX (410) 962-0820
MDDAMDChambers@mdd.uscourts.gov

March 15, 2007

MEMORANDUM TO COUNSEL RE:

The Piney Run Preservation Association v.
County Commissioners of Carroll County
Civil No. AMD 06-3019

Now before the court in this citizen suit instituted under the Clean Water Act is defendant's motion to dismiss for lack of jurisdiction on the ground that the Maryland Department of the Environment is "diligently prosecuting" an enforcement action. No hearing is needed and I have elected to rule in this informal manner.

I have read with keen interest and attention your excellent briefs and the recorded history of plaintiff's admirable efforts to enforce (once and for all time) the CWA in respect to Piney Run. *Piney Run Preservation Ass'n v. Commrs. of Carroll Co.*, 268 F.3d 255 (4th Cir. 2001), *cert. denied*, 535 U.S. 1077 (2002), *rev'g Piney Run Pres. Ass'n v. County Commrs.*, 82 F.Supp.2d 464 (D.Md.2000), and *Piney Run Pres. Ass'n v. County Commrs.*, 50 F. Supp. 2d 443 (D. Md. 1999). *And see Brewster v. Woodhaven Building*, 360 Md. 602, 759 A.2d 738 (2000). Nevertheless, I am satisfied as a matter of law that the consent judgment (even though it does not mandate installation of the chillers that are plaintiff's preferred remedy) and its implementation comfortably come within the relevant standards of "diligent prosecution" and that plaintiff is ousted from its enforcement efforts at this time. *See Community of Cambridge Environmental Health and Community Dev. Group v. City of Cambridge*, 115 F. Supp. 2d 550 (D. Md. 2000).

Accordingly, by separate Order, the motion to dismiss is GRANTED.

Very truly yours,

/s/

Andre M. Davis
United States District Judge

AMD:tt